

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

REF:OCCL:DH

FILE NO.: CDUP MA-3153

March 27, 2009

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Request to Amend Condition # 4 Regarding the Deadline to Finish Construction for Conservation District Use Permit MA-3153 for Koieie Fishpond

APPLICANT: Joplin Paman, Ao Ao O Na Loko I a O Maui (Association of the Fishponds of Maui), P.O. Box 1371, Kihei, Hawaii, 96753, Phone 808-359-1172

LANDOWNER: State Department of Land and Natural Resources (DLNR), Lessee Ao Ao O Na Loko I a O Maui General Lease Number 5929

LOCATION: Offshore Waters, North Kihei, Island of Maui

TMK: Adjacent to TMK's: (2) 3-9-001: Parcels 85, 87 and 147

AREA OF USE: Three (3) Acres

SUBZONE: Resource

BACKGROUND:

On March 25, 2004, Conservation District Use Permit (CDUP) MA-3153 was approved by the Board of Land and Natural Resources (BLNR) to revitalize Koieie Fishpond for educational, cultural, historical, and recreational purposes; subject to nineteen terms and conditions (**Exhibit 1**).

REQUEST:

Ao Ao O Na Loko I a O Maui has submitted a request to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) to amend Condition # 4 which notes, "Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three

years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed.” The request would amend CDUP MA-3153 to have no deadline to complete construction (**Exhibit 2**).

DISCUSSION:

Ao Ao O Na Loko I a O Maui notes they have initiated construction after they received permission to work within the fishpond by Land Division in 2005, and received the General Lease 5929 for Koieie Fishpond in November 18, 2008.

Approximately, 385 linear feet of the 1170 total wall length have been restored. However, there have been several complications: the rocks located along the original footprint are heavily compacted making removal and resetting difficult; prevailing wind and weather and accompanying surf limit work to morning hours; sand migration (from an adjacent land project) around the northern portion of the wall has increased surf action and undermined that particular portion of the wall; the 2006 earthquake affected the integrity of the remaining portions of the wall; and torrential rains in 2007 created extensive flooding in the Kihei area and left excessive deposits of sediment and debris in the project area. Lastly, Ao Ao O Na Loko I a O Maui notes that the amount of grants and/or funding constricts existing and future work efforts. Paid staff and volunteers are the backbone of the restoration project.

Staff notes that Ao Ao O Na Loko I a O Maui is a small non-profit organization and their aim was to reconstruct and maintain the fishpond for cultural and historic preservation, and recreational purposes. Other program components included interpretive and educational programs that involved the collection of historical, cultural and community information about the project site, developing interpretive signage, hosting school children and community organizations tours, conducting community work days, watersheds land and water resource management awareness education programs, web site publications, and lectures.

Staff notes that substantial work has been completed on the fishpond. However, it appears that ongoing work and construction will be a normal feature of the project.

Staff notes that the deadline to initiate construction was March 25, 2005 and the deadline to complete construction was March 25, 2007. Staff believes the request to amend the CDUP MA-3153 to delete the deadline to complete construction is warranted in this particular case due to the difficulty in maintaining the restored fishpond wall areas due to unforeseen events (earthquake, flooding, debris), limited work hours (morning), and lack of funds to hire staff.

At this point, staff believes that all interests are best served by request to delete CDUP MA-3153 Condition # 4 in its entirety subject to the Board of Land and Natural Resources approval.

Staff, therefore, recommends as follows:

RECOMMENDATION:

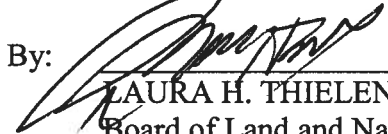
That the Board of Land and Natural Resources delete CDUP MA-3153 Condition # 4 in its entirety.

Respectfully submitted,



Dawn T. Hegger
Senior Staff Planner

Approved for submittal:



By:

LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
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AQUATIC RESOURCES
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL: DH

File No. MA-3153

Acceptance Date: October 23, 2003
180 Exp. Date: April 20, 2004

Farber and Associates
2722 Ferdinand Avenue
Honolulu, Hawaii 96822

APR - 1 2004

Dear Mr. Farber,

SUBJECT: Conservation District Use Permit (CDUP) MA-3153 to Revitalize Koieie Fishpond for Educational, Cultural, Historical, and Recreational Purposes

This letter is to inform you that Conservation District Use Application (CDUA) MA-3153 to revitalize Koieie Fishpond for educational, cultural, historical, and recreational purposes has been approved by the Board of Land and Natural Resources on March 25, 2004, and was subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 4) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 5) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to

EXHIBIT 1

the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

- 7) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 8) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 9) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 10) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 11) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 12) That the applicant submits annual reports from the date of the Board of Land and Natural Resources approval to the Chairperson (or the OCCL) on the status of the project. The report shall contain data concerning beach profiles and photo documentation before and during restoration, and for a period of five years after completion of restoration;
- 13) A qualified archaeologist shall be present to document any historic properties and to provide mitigation measures; 2) an acceptable archeological monitoring plan will need to be submitted to HPD for review and approval prior to construction; 3) HPD shall be notified upon starting and completion of the proposed project; 4) submittal of schematic drawing showing details of the reconstruction plans; 5) additional construction materials may not be obtained from other historic properties; and 6) an archeological inventory shall be conducted if the proposed undertaking extends to the area to the north of the fishpond;

- 14) If the fishpond wall is having impacts to the shoreline (erosion) and the applicant is proposing post-construction alterations, or sand accumulates in the fishpond basin, prior approval must be received from the OCCL before any remedial action is taken;
- 15) The applicant shall notify and receive prior approval from the OCCL, if additional materials (rocks) are to be imported (to review the source location of the materials);
- 16) The applicant shall contact the Maui District Land Office to obtain a lease for the fishpond;
- 17) The applicant shall take responsibility for any deleterious effects resulting from the fishpond restoration on adjacent properties;
- 18) Other terms and conditions as may be prescribed by the Chairperson; and
- 19) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the Office of Conservation and Coastal Lands within thirty (30) days.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Date:


4/20/04

Cc: Maui District Land Agent
Maui Branch Historic Preservation Division
Maui County Department of Planning
Department of Health

RECEIVED
LAND DIVISION
2004 APR 28 A 9:26
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2/13/09



'Ao'ao O Nā Loko I'a O Maui (Association of the Fishponds of Maui)

P.O. Box 1371
Kihei, Hawai'i 96753

Phone: (808) 359-1172
Fax: (808) 573-5696
Website: www.mauifishpond.com
E-mail: koieie@mauifishpond.com

December 29, 2008

Mr. Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

RE: Request to Amend Conservation District Use Permit (CDUP) MA-3153 dated April 1, 2004: Revitalize Kō'ie'ie Fishpond for Educational, Cultural, Historical and Recreational Purposes.

Aloha e Mr. Lemmo,

'Ao'ao O Nā Loko I'a O Maui would like to request that CDUP MA-3153's Condition # 4 be amended to remove the set time constraints given for 'Ao'ao O Nā Loko I'a O Maui to complete the revitalization of Kō'ie'ie Fishpond located in South Maui.

Condition 4 reads as follows:

"Any work done on the land shall be initiated within one year on the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the department in writing when construction activity is initiated and when it is completed."

This request to remove the set time constraints comes as a result of the discoveries made as we endeavor to rebuild this ancient fishpond wall. To date we have restored about 385 feet of the wall, which is about one-third of the total wall length. No two fishponds are alike—and over the course of this project we have faced a number of unique and unanticipated setbacks and challenges and have discovered a number of particularities about this fishpond all of which have contributed to making the restoration of this wall unusually slow going. Thus the existing permit condition to complete the project within three years has proved to be unrealistic.

The following are some of the issues and events, both natural and man-made, which have hindered our progress since the revitalization process began:

- The rocks found along the original wall footprint have been found to be heavily compacted, making their removal and resetting difficult and more time consuming than anticipated.


We value the importance of traditional Hawaiian fishponds. We believe in revitalizing and preserving Kō'ie'ie Loko I'a for future generations to enjoy its historical, cultural, archeological, educational and recreational purposes.

Mission Statement of 'Ao'ao O Nā Loko I'a O Maui

- The prevailing weather and surf patterns—afternoon high tradewinds from the northwest accompanied by wind driven surf generally limit working on the wall to the morning hours only.
- A number of random events have resulted in damaging portions of the restored fishpond wall. In 2005 to 2006, adjacent construction activities at the Hawaiian Islands Humpback Whale National Marine Sanctuary site—extensive pile driving caused sections of the northern wall to collapse and dumping of an excavated sand dune next to the northern end of the fishpond basin resulted in excess sand migrating around the northern wall resulting in increased surf in that location, undermining parts of the wall. A statewide earthquake followed by several after-shocks in October 2006 affected the integrity of restored portions of the wall. Abnormally high surf in July 2007 damaged completed sections of the northern exposure of the wall. In December 2007, torrential rains caused extensive flooding in the Kīhei district leaving excessive deposits of sediment and debris in and around the project area.
- Finally, 'Ao'ao O Nā Loko I'a O Maui is a non-profit 501(c)3 organization that relies heavily on outside sources of funding and fund raising events to support our educational and wall restoring efforts. We can only work as fast as the number of paid staff that we have and during the volunteer and work days that are organized. There was a period of restoration inactivity due to funding constraints with the most recent being from summer 2007 to the present. We are now moving through that period and have a full time staff person to administer the project and seek additional funds and a dedicated volunteer to head the restoration of the wall. We have several grant applications being reviewed at this time to support this volunteer's work and eventually pay him for his time. Thus ensuring that work will move forward.

Based upon the information above, we would appreciate your time and consideration with our request to amend CDUP MA-3153's Condition # 4 and remove the set time constraints given for our non-profit to complete the revitalization of Kō'ie'ie Fishpond located in South Maui. If you have any questions, please feel free to contact our Executive Director, Joylynn Paman at (808)359-1172 or at koieie@mauifishpond.com.

Mahalo nui,


 Joylynn Paman
 Executive Director